INDEX

	Page.
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Specification of errors to be urged	3
Argument	4
Conclusion	4
Appendix	5–6

CITATIONS

Case:	
Commissioner v. *Julia Butterworth*, No. 75, October Term, 1933	4
Statutes:	
Revenue Act of 1926, c. 27, Sec. 219, 44 Stat. 9 (U.S.C.App., Title 26, Sec. 960)	5
Purdon's Pennsylvania Statutes Annotated, Title 20, Decedents' and Trust Estates:	
Sec. 31	6
Sec. 261	6

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 76

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

FIDELITY-PHILADELPHIA TRUST COMPANY, TRUSTEE UNDER THE WILL OF WILLIAM L. DuBOIS, deceased

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 14) is reported in 25 B.T.A. 1359. The opinion of the Circuit Court of Appeals (R. 26) is reported in 63 F. (2d) 949.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 4, 1933 (R. 28). The petition for a writ of certiorari was filed May 17, 1933, and

was granted May 29, 1933 (R. 28). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a testamentary trustee is entitled to claim as a deduction, in computing the net income of the trust, amounts which are distributed to the testator's widow, who elected to take an interest in the trust created by the will in lieu of her dower and statutory interest in the testator's estate.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra,* pp. 5–6.

STATEMENT

The material facts, as stipulated and found by the Board (R. 11–13, 14–17), may be summarized as follows:

The respondent is a Pennsylvania corporation and is the successor of the Philadelphia Trust Company as trustee under the will of William L. DuBois, deceased, who died a resident of Pennsylvania on October 26, 1918. (R. 11.) By his will the testator left all of his estate, both real and personal, in trust, with directions to pay out of the income therefrom $4,000 per year to his son and the balance to his wife during her lifetime, thereafter the son to receive a two-thirds life interest, with a power of appointment over the remainder.

(R. 11–12.) The widow elected to take under the will. The amounts paid her by the respondents in 1926 and 1927, the tax years here involved, together with those paid in previous years, did not aggregate in amount the value of the interest to which she would have been entitled had she taken against the will. (R. 13.)

In computing the taxable income of the estate for the years involved the respondent deducted from gross income the amounts distributed to the widow. The Commissioner disallowed the deduction thus claimed and asserted deficiencies accordingly. (R. 4–6, 8–10.) The Board of Tax Appeals approved the Commissioner's action. The court below reversed, one judge dissenting.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in holding that the distributions were of income as such and that the widow was with respect to these distributions a true beneficiary.

2. The Circuit Court of Appeals erred in holding that income, distributed by a testamentary trustee to a widow who has elected to take under the will, is deductible by the trustee although it is not taxable to the widow, thus creating an exemption not contemplated by the revenue statutes.

3. The Circuit Court of Appeals erred in deciding that the amounts distributed by the respondent to the widow in pursuance of the terms of the testamentary trust were deductible by the trustees.

4. The Circuit Court of Appeals erred in reversing the decision of the Board of Tax Appeals.

ARGUMENT

This case presents the precise question involved in *Commissioner* v. *Julia Butterworth,* pending before this Court as No. 75, October Term, 1933. The Court is respectfully referred to the argument and authorities presented in that brief.

CONCLUSION

The judgment of the Circuit Court of Appeals should be reversed, unless it be concluded that the income in question is taxable in full to the widow.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.
ERWIN N. GRISWOLD,
SEWALL KEY,
WM. CUTLER THOMPSON,
Special Assistants to the Attorney General.

OCTOBER 1933.

APPENDIX

STATUTES INVOLVED

REVENUE ACT OF 1926, C. 27, 44 STAT. 9

SEC. 219. (a) The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trust, including—

* * * * * * *

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct; * * *.

* * * * * * *

(b) Except as otherwise provided in subdivisions (g) and (h), the tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that—

* * * * * * *

(2) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to

them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under paragraph (3) in the same or any succeeding taxable year; * * * (U.S.C. App., Title 26, Sec. 960).

PURDON'S PENNSYLVANIA STATUTES ANNOTATED, TITLE 20, DECEDENTS' AND TRUST ESTATES

SEC. 31. *Widow's share in lieu of dower.* The shares of the estate directed by this act to be allotted to the widow shall be in lieu and full satisfaction of her dower at common law, so far as relates to land of which the husband died seised; and her share in lands aliened by the husband in his lifetime, without her joining in the conveyance, shall be the same as her share in lands of which the husband died seised. * * * (1917, June 7, P.L. 429, § 3.)

SEC. 261. *Spouse can elect to take against will.*—When any person shall die testate, leaving a surviving spouse who shall elect to take against the will; such surviving spouse shall be entitled to such interests in the real and personal estate of the deceased spouse as he or she would have been entitled to had the testator died intestate: * * *. (1917, June 7, P.L. 403, § 23 [a].)

U.S. GOVERNMENT PRINTING OFFICE: 1958